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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,478	07/30/2003	Patricio Nilo	1065.43	9198
7590 08/10/2005 MELVIN K. SILVERMAN & ASSOC., P.C. SUITE 500 500 WEST CYPRESS CREEK ROAD FORT LAUDERDALE, FL 33309			EXAMINER WILSON, JOHN J	
			ART UNIT 3732	PAPER NUMBER

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/630,478

Applicant(s)

NILO ET AL.

Examiner

John J. Wilson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/30/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al (6887077). Porter shows a method of bone expansion including creating an osseotomy site using a pilot drill, Fig. 4A, screwing a first threaded expander 50, fig. 3, in the site, Fig. 4C, to compress bone and retrieving as is inherent in the shown method, repeating these steps, column 4, lines 55-67 and column 5, lines 27-43, see specifically, lines 37 and 38, as needed to form a site having a diameter less than the implant, column 4, lines 17-27. To allow the expander to stay in the site for a time is an obvious matter of choice in the degree of a known parameter of compressing bone to one of ordinary skill in the art. As to claim 2, see using same thread as implant, column 4, lines 28 and 29. As to claim 4, the range of difference in diameters is an obvious matter of choice in degree of compression changes to the skilled artisan. As to claim 12, see extending the site, Fig. 4B. The depth of this extension is an obvious matter of choice in the degree of the size of the implant desired.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al (6887077) as applied to claim 1 above, and further in view of Dalmau (6146138). Porter does not show a ratchet. Dalmau teaches using a wrench, column 5, line 51. It would be obvious to

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one of ordinary skill in the art to modify Porter to include a wrench as shown by Dalmau in order to make use of known drivers in the art. The specific type of tool used is an obvious matter of choice in known tools to the skilled artisan.

Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al (6887077) in view of Lorenzi (2002/0094508). Porter shows an expander 50, Fig. 3, having a cylindrical shaft 52 and threaded tip 54, and teaches using a plurality of expanders, column 4, lines 55-67 and column 5, lines 27-43. Porter does not show the top or transition portions, or markings. Lorenzi shows a top 12 for engaging a tool 35 and a transition between the top and the cylindrical shaft 14 as shown and shows markings 19. It would be obvious to one of ordinary skill in the art to modify Porter to include top and transition portions as shown by Lorenzi in order to apply forces to the tool, and to include markings as shown by Lorenzi in order to better judge depth. As to claim 24, see Fig. 6 of Lorenzi.

### *Drawings*

The drawings filed July 30, 2003 have been found to be acceptable by the examiner.

### *Conclusion*

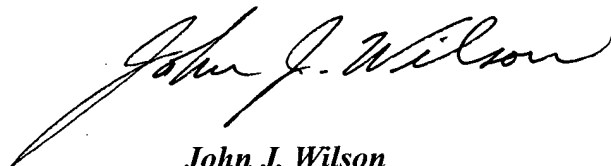
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Vrespa (5259398) shows a tool, Fig. 3. Hahn et al (5795160) shows a tool, Fig. 8. Nowak (5997298) shows a set of tools.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722). The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached at 571-272-4720). The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**John J. Wilson**  
**Primary Examiner**  
**Art Unit 3732**

jjw  
August 5, 2005